IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.808 OF 1996
IN
COMPANY APPLICATION NO.539 OF 1995
IN
COMPANY PETITION NO.112 OF 1993

Shri Winston Vaz, Ex-Director
of the Company (in liquidation)
residing at: Usha Kiran, Carl
Michael Road, Mumbai .. Appellant.

V/s.

1. M/s.Marketing Advertising
Associates Pvt. Ltd., having
its Registered Office at:5,
Convent St., Mumbai-400005

2. Board of Trustees of the
Port of Bombay, a Statutory
Corporation, constituted
under the Majot Port Trusts
Act, 1963, as amended by
the Major Port Trusts
(Amendment Act, 1974), having
its Office at Administrative
Offices, at : Shoorji Vallabh-
das Marg, Ballard Estate,
Mumbai - 400 038

3. The Official Liquidator,
High Court, Mumbai
Liquidator of M/s. New India
Fisteries Ltd. (in Liquidat-
ion) having its Registered
Office at: Sassoon Docks,
Colaba, Mumbai 0 400 005. .. Respondents.

Mr.S.V. Borkar i/b. Bhavna Bhatt for the appellant.
Mr.U.J. Makhija i/b. Mulla & Mulla for respondent No.2.
Mr.P.G. Rao, Dy. Official Liquidator present.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 24TH NOVEMBER, 2004.

ORAL JUDGMENT : (Per R.M. Lodha, J.)

Heard the learned counsel for the parties.

2. There is no dispute that the subject property was taken on long term lease basis by the company in liquidation from the Board of Trustees of the Port of Bombay ('BPT'). The company failed and neglected to pay the compensation (charges) under the lease. By the order dated March 14, 1983 the company was ordered to be wound up and the official liquidator was appointed. There also appears to be no dispute that the lessor BPT lodged their claim with the official liquidator in respect of the arrears of compensation payable by the company in liquidation. The BPT has forfeited the lease of the subject property due to the breach of terms and conditions of the lease and called upon the official liquidator to handover vacant and peaceful possession of the lease premises. In the month of October, 1995 when the company application was made by the lessor BPT for diretion to the official liquidator to hand over peaceful possession of the subject property, it appears that an amount of Rs.14,49,366.38 or about was outstanding against the company in liquidation being the arrears of compensation. The subject premises have not been in use by the company for last many years. There is also no dispute that two other plots being plot Nos.3 and 5 which were taken on lease by the company in liquidation from the BPT were ordered to be handed over by the learned company

judge to the lessor BPT and the said order has attained finality. In the backdrop of these facts the order passed by the learned company judge directing the Official Liquidator to hand over the subject premises to the lessor BPT cannot be faulted.

3. Though the impugned order does not indicate the reasons, the fact that the lessor BPT has been denied the payment of Rs.14,49,366.38 being the arrears of compensation since the property was being handed over to the lessor, it is clear that the learned company judge was not oblivious to the interest of the creditors.

4. In the facts and circumstances of the present case, the possession of the subject premises ordered to be handed over to the lessor BPT, therefore, does not call for any interference.

5. The appeal is dismissed. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)